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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/646,553	09/19/2000	Michel Gillet	BEIERDORF 65	1497

7590 08/16/2004

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NEW YORK, NY 10017

EXAMINER
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SIMONE, CATHERINE A

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 08/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/646,553

Applicant(s)

GILLET ET AL.

Examiner

Catherine Simone

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 July 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Attachment.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.Claim(s) objected to: none.Claim(s) rejected: 1-4, 6 and 15-23.Claim(s) withdrawn from consideration: none.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

## **ADVISORY ACTION**

### ***Response to Arguments***

Applicant's arguments filed 7/26/04 have been fully considered but they are not persuasive.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Murayama et al. clearly teaches an elastic laminate comprising at least a first layer of an elastic polymer film (see col. 2, lines 18-20 and lines 56-60) and a second layer of an elastic textile sheet (see col. 2, lines 21-22), wherein a self-adhesive coating (see col. 2, lines 8-13 and lines 16-22) has been applied to the textile sheet on the side opposite to that in contact with the polymer film (see col. 5, lines 19-27) and wherein the first layer is composed of two layers with an outer layer and a tie layer, where the tie layer is composed of pure thermoplastic polyolefins (see col. 2, lines 56-58 and lines 64-65). Feret was merely cited for suggesting that it is old and well-known in the analogous art to have an embossed elastic polymer film and that it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the polymer film in Murayama et al. with either a microembossed effect or a macroembossed effect as suggested by Feret in

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order to produce a self-adhered elastic laminate such as a bandage. One skilled in the art would clearly be able to either microemboss or macroemboss the polymer film in Murayama et al., if so desired.

Applicants further argue that “the disclosure refers to extrusion molding, not coextrusion. In extrusion molding, melted or softened plastic is forced through a die. See attachment, *How Plastics are Made*. There is no express or implied reference to coextruding multiple layers.” However, it is to be pointed out that the limitation “co-extruded” is a method of production and therefore does not determine the patentability of the product itself. Process limitations are given little or no patentable weight. The method of forming the product is not germane to the issue of patentability of the product itself, unless Applicant presents evidence from which the Examiner could reasonably conclude that the claimed product differs in kind from that of the prior art. MPEP 2113.

Furthermore, Applicants argue that “claim 1 requires that the tie layer be pure thermoplastic polyolefins. This limitation cannot reasonably be viewed as obvious over a disclosure of “different materials”.” However, it is to be pointed out in column 2, lines 56-58 and lines 64-65 of Murayama et al., that the film can be and is preferred to be a polyolefin film and can be multi-layered. There is no mention in Murayama et al. of any additives being added to the polyolefin, so it appears to be pure. Therefore, Murayama et al. clearly teaches a tie layer composed of pure thermoplastic polyolefins. Thus, the claims fail to patentably define over the prior art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catherine Simone whose telephone number is (571)272-1501. The examiner can normally be reached on 9:30-6:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Catherine Simone  
Examiner  
Art Unit 1772  
August 9, 2004



HAROLD PYON  
SUPERVISORY PATENT EXAMINER

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